

Minutes (Draft)
Forensic Science Board Meeting
January 9, 2008
DFS Central Laboratory, Classroom

Board Members Present

Mr. Steven Benjamin
Mr. Joseph Bono, Chair
Leah Bush, M.D.
Mr. Leonard Cooke
Mr. Mark Davis (designee for Ms. Marla Decker)
Mr. Barry Fisher
Colonel W. Steven Flaherty
Mr. Karl Hade
Sheriff F. W. Howard
Kristen Howard (designee for Delegate Albo)
Mr. Robert Jensen
Ms. Elizabeth Russell
Mr. S. Randolph Sengel

Staff Members Present

Ms. Wanda Adkins, Office Manager
Mr. Jeff Ban, Central Laboratory Director
Dave Barron, Ph.D., Technical Services Director
Ms. Leslie Ellis, Human Resources Director
Ms. Michele Gowdy, Department Counsel
Ms. Linda Jackson, Section Chief Controlled Substances
Ms. Katie Jones, Administrative Specialist Forensic Biology
Mr. Ron Layne, Director of Administration and Finance
Ms. Alka Lohmann, Breath Alcohol Section Chief
Mr. Pete Marone, Director, Department of Forensic Science
Ms. Carisa Onorato, Administrative Specialist Breath Alcohol
Mr. Kevin Patrick, Western Laboratory Director
Mr. Steve Sigel, Deputy Director
Mr. Sherwood Stroble, Policy, Planning and Budget Manager
Ms. Susan Uremovich, Eastern Laboratory Director
Ms. Amy Wong, Northern Laboratory Director

Call to Order:

Mr. Bono called the meeting to order at 10:00 a.m.

Mr. Bono acknowledged Wanda Adkins as the temporary secretary for the meeting.

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48 Adoption of Agenda:
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50 Mr. Bono asked if there were any additions or changes to the draft agenda. There were none.
51 Mr. Cooke made a motion to adopt the agenda, seconded by Colonel Flaherty and it was adopted
52 without amendment by unanimous vote.
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54 Adoption of Minutes:
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56 Mr. Bono asked if there were any changes that needed to be made to the draft minutes from the
57 October 17, 2007 meeting. Mr. Benjamin requested that an addendum be attached to the minutes
58 regarding Mr. Marone's report on the post conviction testing. Mr. Benjamin made a motion to
59 accept the draft minutes with the addendum, seconded by Sheriff Howard and accepted by
60 unanimous vote.
61

62 Chairman's Report:
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64 Mr. Bono welcomed Dr. Leah Bush, new Chief Medical Examiner, as a new member to the
65 Forensic Science Board.
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67 Director's Report
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69 Director Marone asked members of the Board to look at the information that had been provided
70 on the 30-60-90 day workload summary reports by lab section as of January 1, 2008.
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72 The DNA Section Chief posting has just closed and interviews will be conducted shortly – again
73 Minimum Qualifications include:

- 74 -Master's Degree or Waiver by ASCLD
- 75 -3 years of Laboratory Experience as a Forensic Nuclear DNA examiner
- 76 -QA/QC Experience
- 77 -Expert Testimony
- 78 -Research and Methods Development
79

80 Building update:

- 81 -Northern Laboratory – Construction is continuing with an expected move-in date
82 in April of 2009
- 83 -Central Laboratory – Administration space in Biotech 8 is projected to be ready
84 in February
- 85 -Eastern Laboratory – We have acquired 5,700 square feet with another 15,000
86 space to be available in late summer on the 5th floor for expansion
- 87 -Western Laboratory – In the future we hope to be able to acquire additional land
88 adjacent to current location.
89

90 Director Marone reported on the following grants:
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1) NIJ – Forensic Science Training Development and Delivery Program – development of new training, enhancement of existing training, and delivery of new and existing forensic science training – no \$\$ amount specified – application due Feb. 4. Board approved to proceed.

2) NIJ – Solving Cold Cases with DNA – reviewing, investigating violent crime cold cases that have potential to be solved using DNA – awards not to exceed \$500,000. Board approved to proceed.

3) NIJ - Social Science Research in Forensic Science – improve the practice of processing of impression evidence, including fingerprint, tool marks, bite marks, and shoe prints – no dollar amount specified for individual awards. Board approved to proceed.

4) NIJ - “Research and Development in the Area of Controlled Substances Detection and Analysis” – We have submitted a concept paper requesting \$50,100. The title of the proposed project is “Development of a Thin Layer chromatography Method for the Separation of Enantiomers Using Chiral Mobile Phase Additives.” The project seeks to find low cost alternatives for separating enantiomers which are controlled differently, such as dextromethorphan (NCS) and levomethorphan (Schedule II). Board approved to proceed.

The DNA/Serology case file review of all 534,000 files have been reviewed and pre-screened. A flow chart was provided pursuant to the Chairman’s request. A copy of the flow chart is attached to the minutes.

The review began with 5,000 cases containing human biological evidence. 2,000 of those cases contained only known samples from the Office of the Chief Medical Examiner. 2,215 cases contain crime scene evidence and a suspect and 850 cases have no named suspect. Requests to the Commonwealth’s Attorney, Virginia State Police and the Clerks of Court are being sent on the 2,215 to determine whether or not there was a conviction and what crime he/she was convicted of.

Cases returned from the private laboratory are being analyzed at DFS and fit into four general categories: 1) Suspect is included – you see the individual’s profile on the evidence; 2) Data Insufficient to Reach a Conclusion – very limited data; 3) No results; 4) Suspect is not indicated on the evidence – we have some results and the convicted person’s profile is not there.

Mr. Sengel addressed the Board indicating that the post conviction cases were and are being addressed by the Commonwealth’s Attorneys’ and at a recent meeting in December this issue was discussed quite thoroughly and that the prosecutors in Virginia take their jobs very seriously and are committed to doing what needs to be done with the results of these investigations whether they exclude or exculpate or raise serious questions about the investigation. Governor Kaine has a sub-committee to address possible revisions to the orders regarding this testing. As a member of that committee Mr. Sengel is happy to raise the concerns of this Board to that sub-committee.

Mr. Benjamin requested that DFS report to the Board on the criteria that was provided to them by the Governor on which post conviction cases would be tested.

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139 The Board then took out of order Agenda Item VIII which was the review of the draft letter
140 notifying suspects of evidence in post-conviction testing files that the Board had asked Mr.
141 Benjamin to draft. Mr. Benjamin addressed the Board and discussion took place.

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143 This proposed letter would be for the non tested cases. For those cases that were tested it would
144 be notifying the individual that evidence was submitted for testing and it was analyzed and it
145 tells them what to do if they want to obtain the results of testing and that's to be worked out.

146
147 Mr. Benjamin moved that the Board proceed with the development of the letter that he drafted
148 and institute procedures for its dissemination, there was no second and the motion died.

149
150 Mr. Benjamin made a subsequent motion that the Board bring the issue to the attention of the
151 Governor and to the Chairs of the Courts of Justice Committees both the House of Delegates and
152 the Senate of Virginia, seconded by Mr. Jensen but Mr. Fisher proposed a friendly amendment to
153 the motion: That the Chair direct Steve Benjamin to develop a letter to the appropriate people in
154 the Commonwealth of Virginia Government outlining the issue and provide the draft at least a
155 month before the next meeting for circulation to the Board in order to take action. Mr. Benjamin
156 agreed to adopt the present amendment offered by Mr. Fisher.

157
158 There was general discussion among the Board members on the notification and who would be
159 responsible for this notification. Some of the Board members expressed concern regarding
160 additional workload, fiscal impacts, who the responsible party would be, if this was in the
161 authority of the Board to delegate to other agencies or if it was outside of the purview of the
162 Board's responsibilities.

163
164 The motion was defeated 6 no votes to 4 yes votes and 2 abstained: Mr. Benjamin – Yes;
165 Mr. Cooke - No; Mr. Davis – No; Dr. Bush – Yes; Colonel Flaherty – No; Mr. Hade –
166 Abstained; Sheriff Howard – No; Mr. Jensen – Yes; Ms. Russell – No; Ms. Howard - Abstained
167 Mr. Fisher –Yes; Mr. Sengel - No

168
169 DFS has been validating and training on Y-STR technology for several years and expects to put
170 this type of testing on-line sometime before July of 2008. Mr. Benjamin reminded the Board that
171 any new protocols or validation studies conducted by DFS are required by statute that the
172 Scientific Advisory Committee review all methods of testing, all scientific programs and report
173 its recommendations to the Board. The statute is mandatory and if DFS is validating and making
174 decisions on new technology we need to have the involvement of the Scientific Advisory
175 Committee and hopefully the Committee will approve of the methodology, testing and the
176 protocols that are being used now.

177
178 Mr. Benjamin made a motion to ask the Scientific Advisory Committee to perform and review
179 the Y-STR testing that DFS is validating and report to the Board by the May 7, 2008 meeting,
180 seconded by Mr. Hade and accepted by unanimous vote with Mr. Fisher (Scientific Advisory
181 Committee Chair) abstaining.

The Mitochondrial lab staff has received Mito and CODIS training and has ordered servers for both programs (Mito and CODIS), they should be operational sometime in February. The manuals are currently being drafted and the laboratory should be online and processing casework this spring.

A screening method for unknown powders, tablets and residues utilizing the AccuTOF-DART has been validated and added to the technical procedures in our Controlled Substances section. Staff members in the Central laboratory have undergone training and competency testing to use the technique in casework. Screening using AccuTOF-DART can take minutes as opposed to nearly an hour on the Gas Chromatograph - Mass Spectrometer. Further validation studies focusing on selectivity are ongoing, in order to allow for other methods which may utilize the AccuTOF-DART as a confirmatory tool. This may be valuable in reducing the analysis time of marked prescription tablets.

Status of new blood vial kit – A new kit has been created which should make the process more clearly to the officers – the kit will include pictograms and instructions. In addition, the Certificate of Blood Withdrawal will have user-friendly cuts and instructions to clearly mark the portions which need to be affixed to the vial. The blood vial cannot have the certificate of blood withdrawal on it because there is a time limit for the vacuum tubes and because it can't be put on until after the blood because of the applicator.

Breath alcohol instrumentation – The six month evaluation period will end in late February and we expect to award contract by early March. The first shipment of instruments will be 75 days after the contract is awarded with the remaining of the instruments coming 150 days after the contract is awarded.

DFS and the newly appointed Chief Medical Examiner, Dr. Bush has agreed to have ongoing discussions about the evidence transfers, and timeliness of results in all disciplines, especially toxicology.

Scientific Advisory Committee Report

Mr. Fisher reported that the Scientific Advisory Committee had requested at their previous meeting that DFS research and review discipline specific certification requirements from relevant certification bodies; research and review the training guidelines recommended by Scientific Working Groups (SWG's) and review the individual DFS examiner training programs in comparison to the certification bodies and SWG's. The presentation was given by Dr. Barron and the Committee felt that DFS' training program meets and exceeds what is required.

The Scientific Committee had also requested at their previous meeting a report on Contextual Bias. Mr. Fisher appointed Norah Rudin, Ph.D. and Arthur Eisenberg, Ph.D., to the DNA Working Group and asked that Dr. Rudin give their finding to the Forensic Science Board. A copy of the report is attached as an addendum.

Contextual bias – The subcommittee made recommendations for DFS to consider minimizing the perception of and potential for contextual bias. The Scientific Committee

Administrative/legal assistance
required to obtain reference samples

Standard report, as per laboratory
protocol, written to the case file

decided to give DFS time to review and study the recommendations in depth and report back to the Committee at its next meeting.

Mr. Benjamin made a motion that the recommendations of the Working Group be implemented by DFS. Mr. Jensen seconded the motion and passed by unanimous vote.

Breath Alcohol Regulations

Ms. Lohmann, Breath Alcohol Section Chief, addressed the Board on changes that needed to be made to the proposed Regulations on Breath Alcohol Testing. Mr. Fisher made a motion that the Board adopted the Breath Alcohol Regulations with the proposed changes, seconded by Colonel Flaherty and passed by unanimous vote.

Review of Innocence Project Legislative Proposal

Shawn Armbrust, Executive Director of the Mid-Atlantic Innocence Project, addressed the Board and stated that since DFS is validating and training on Y-STR technology and planning to implement this program the legislative proposal by the Innocence Project would be no longer needed.

New Business – None

Public Comment – None

Mr. Bono reminded members that the next meeting of the Forensic Science Board would be May 7, 2008 at 10:00 a.m.

The meeting adjourned at 12:30 p.m.

Addendum #1 -

Subcommittee statement on “inconclusives” in the first 31 Mary Jane Burton cases

At the August 8, 2007 Forensic Science Board meeting, A motion was passed to request the Scientific Advisory Committee to “study, report, and make recommendations on the criteria being used by the lab to report a case as inconclusive in the Mary Jane case file review.”

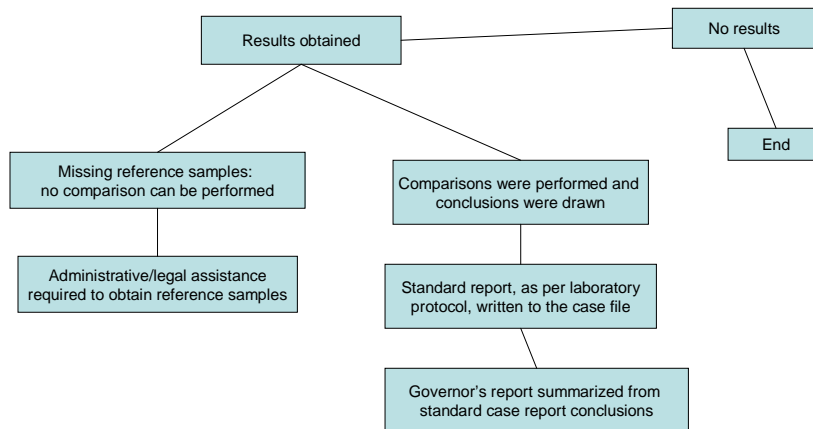
Because the report containing these conclusions is considered part of the Governor’s working papers, and no separate reports were prepared by the lab, it became a challenge for the subcommittee to gain access to the information that it was requested to review. Ultimately the members of the subcommittee were granted access to the document during a visit to the laboratory that occurred on January 7, 2008.

During this visit it was learned that 9 of the original 31 cases had been reported as “inconclusive.” Of the remaining 22 cases, in 6 instances, the suspect was excluded as a contributor of the evidence; however in only 2 of those cases did this information provide the factual basis for exoneration. In the other 4 exclusions, the evidence either was not relevant or

did not change the facts of the case, and the convictions stood. In 16 cases, the original suspect was confirmed as a possible contributor of relevant evidence and the convictions stood.

As directed, the subcommittee focused on the 9 “inconclusive” cases. Upon reviewing the Governor’s report, it was found that 4 of these cases were reported as inconclusive because appropriate reference samples were not available. In these cases, results were obtained for the evidence samples that could be compared when and if reference samples were obtained. In 5 of the 9 “inconclusive” cases it was reported that no results were obtained for any of the evidence samples. The subcommittee requested access to the sample data to independently assess this

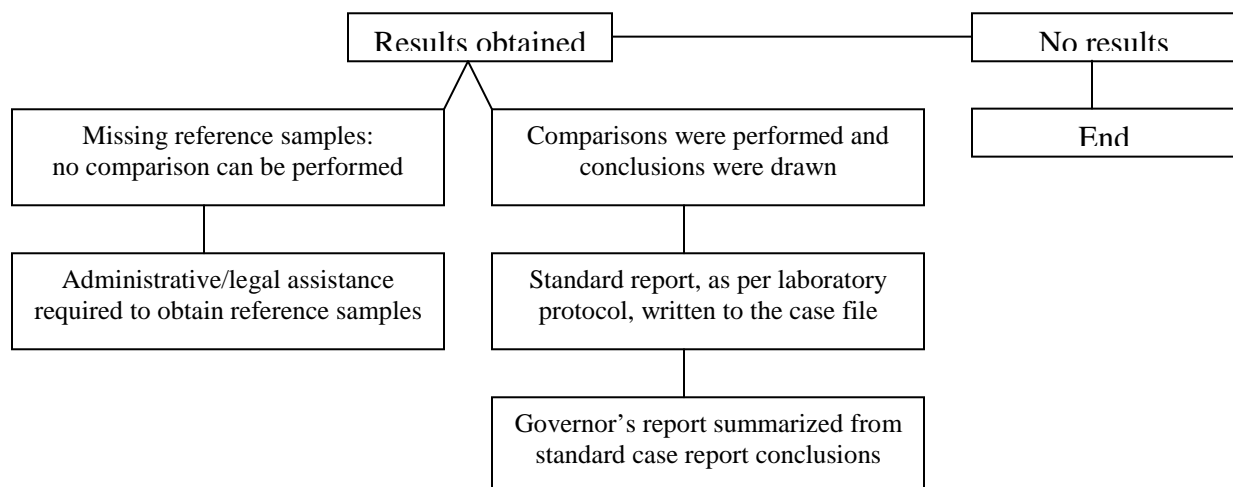
provided us with full
subcommittee agreed
ver, in one case, some
id in the case file. Mr.
weak and no reliable
existence of the data
ement to describe the



*t is not possible to
resent. Insufficient
nce sample.*

that interested parties
ght be tested in more

as “inconclusive”, the
reporting process and
are received back from



Addendum #2 - Post-Conviction testing project flow chart

